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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DERWIN WADE MCCOWAN, Defendant - Appellant.	No. 06-10652 D.C. No. CR-02-05368-OWW MEMORANDUM [*]

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted January 14, 2008 [**]

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Derwin Wade McCowan appeals from the 262-month sentence imposed following re-sentencing pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Cir. 2005) (en banc). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

McCowan contends that the district court erred by failing to grant him a downward adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1 because he confessed his crime to the police. We disagree. McCowan's statements during sentencing were inconsistent with acceptance of responsibility. *See United States v. Scrivener*, 189 F.3d 944, 948 (9th Cir. 1999).

McCowan further contends that his sentence is unreasonable because the mandatory statutory minimum would have been a sufficient, but not greater than necessary, punishment. We disagree. The district court properly analyzed the factors set forth by 18 U.S.C. § 3553(a) factors, and we conclude that McCowan's sentence is not unreasonable. *See United States v. Mohamed*, 459 F.3d 979, 985-87 (9th Cir. 2006); *see also Gall v. United States*, 128 S. Ct. 586, 597-98 (2007).

Finally, McCowan's contention that there was insufficient proof that he is a career offender under U.S.S.G. § 4B1.1 is precluded under the law of the case doctrine. *See United States v. Scrivner*, 189 F.3d 825, 827 (9th Cir. 1999).

AFFIRMED.